Service Date: May 12, 1999

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER of the Application of	)	UTILITY DIVISION
MONTANA POWER COMPANY for	)	
Approval of its Electric Utility Restructuring	)	DOCKET NO. D97.7.90
Transition Plan Filed Pursuant to Senate Bill 390.	)	ORDER No. 5986i

ORDER ON RECONSIDERATION

FINDINGS OF FACT

Background

1. On February 4, 1999, the Montana Public Service Commission (Commission) issued Order No. 5986g, allocating the universal system benefits fund obligation for Montana Power Company (MPC) among various qualifying public purpose categories. The order established targets for funding conservation, market transformation, low-income assistance, renewable resources and research and development.

2. The Commission allocated approximately $1.8 million to low-income assistance. Within the low-income assistance category, the Commission directed MPC to spend at least as much on bill assistance, weatherization and Energy Share as MPC spent on these items in 1998. The Commission did not specify how the remainder of the $1.8 million should be spent, but gave MPC the flexibility to use the funds in a way that would maximize low-income benefits. The Commission declined to alter the amount and structure of the low-income discount, as Intervenor Montana Department of Health and Human Services (DPHHS) had recommended, without a more thorough examination of those issues.

3. In Order 5986g, the Commission also discussed the process for determining future universal system benefits program allocations. Because the record lacked proposals for allocating future universal system benefits funds which would incorporate Commission jurisdiction over the use of these funds, the Commission indicated that it would host roundtable discussions with interested parties before making a final decision on how to make future allocations.

4. On February 12, 1999, DPHHS submitted a Request for Clarification and Reconsideration of Order 5986g, asking the Commission to further specify how the total $1.8 million low-income allocation should be spent. DPHHS also asked the Commission to reconsider its decision not to allow changes to the structure and amount of the low-income rate discount. DPHHS asserted that there was adequate evidence in the record to support an increase in the level of the low-income rate discount. According to DPHHS, the fact that other parties did not seriously challenge its proposals did not diminish their evidentiary or substantive merit. DPHHS maintained that it was important for the Commission to remove uncertainty and ambiguity regarding allocations within the low-income category so assistance for low-income families can proceed immediately with a high level of confidence. DPHHS asked the Commission to direct an increase in the low-income rate discount to 20 percent from the current 10 percent. Funding the low-income discount at this level would require $948,000 in 1999. Weatherization and Energy Share would be funded at $625,000 and $212,818 respectively.

5. On March 4, 1999, District XI Human Resource Council (HRC) submitted written comments supporting DPHHS's request for Clarification and Reconsideration. HRC agreed that the structure of the low-income rate discount should not be changed in this proceeding. However, HRC did support increasing the amount of the discount to at least 15 percent. HRC suggested allocating $852,000 for bill assistance to fund a larger rate discount and expand participation in the rate discount program. HRC also recommended a $700,000 allocation for weatherization, a portion of which should fund a low-income renewable program. HRC proposed allocating $233,000 to Energy Share.

MPC's USBC Administration Plan

6. On March 31, 1999, MPC submitted a proposed plan for administering USBC funds. The goal of MPC's plan would be to efficiently deliver public purpose benefits to its customers while minimizing the chances for disallowed investments. MPC's proposal would create an advisory board to provide an avenue for public input and involvement in the allocation of universal system benefits funds. The advisory board would work within guidelines established by the Commission, the Transition Advisory Committee and those that may be established by the State fund administrator. The advisory board's recommendations would carry "significant weight" in MPC's decision making, but MPC would retain accountability for the investments.

7. The advisory board would consist of one voting member from each of the following interest groups: low-income, environmental, large customers, residential customers, commercial customers, MPC and the Administration. The PSC and MCC would each have non-voting memberships. The low-income, environmental and large customer interest groups would designate their respective voting members. The Governor would appoint the Administration voting member. The first residential and commercial customer members would be selected by MPC from its customer advisory panels. The advisory board would create working groups related to various public purpose categories (e.g., low-income) to expand the base of public input into the board's work products.

8. The low-income working group would have an immediate role in 1999. Order No. 5986g established a low-income spending level greater than what MPC's past low-income programs have cost. The low-income working group and the advisory board would need to determine how to spend the additional low-income funds, as well as any unspent large customer rebate dollars. (Order 5986g requires unspent LCR funds to be reallocated to low-income assistance.) The advisory board would focus on establishing board processes, creating and directing working groups, developing the infrastructure for the large customer pre-qualification process, developing renewable projects, participating in rulemakings and developing priorities and processes for 2000 and beyond.

PSC's Notice of Opportunity to Comment

9. On April 7, 1999, the Commission issued a Notice of Opportunity to Comment on MPC's advisory board proposal as a way of addressing universal system benefits fund allocation issues and the DPHHS Motion for Reconsideration. Written comments were due April 16, 1999. The Commission received comments from DPHHS, XENERGY, Montana HRDC Directors' Association, District XI HRC and Nancy Pitblado. On April 16, 1999, MPC requested an opportunity to respond to the comments submitted to the Commission. At a noticed work session on April 20, 1999, the Commission granted MPC until April 23 to submit its response.

Summary of Comments

10. Comments from DPHHS, Montana HRDC Directors' Association and District XI HRC are closely aligned. In general, these parties do not think MPC's advisory board proposal can or should be used to determine the use of the Commission-directed low-income allocation. DPHHS

asserted that low-income energy needs have been studied for years and that setting up another advisory committee will not produce a "magical solution." DPHHS and the HRDC Directors Association both recommend that the Commission define the 1999 low-income allocation and fix that allocation for each year of the initial USBC authorization period.[1]

11. DPHHS, HRDC Directors Association and District XI HRC all believe that MPC's advisory board proposal might inefficiently consume time and resources without resolving immediate low-income issues. District XI HRC recommended that the Commission establish low-income allocations for 1999, but allow MPC to modify actual spending as conditions warrant. District XI HRC believed that MPC's existing advisory committee could perform the functions that MPC proposes to shift to a more complicated advisory board structure. The low-income allocation recommended by DPHHS, HRDC Directors' Association and District XI HRC is shown in Table 1.

Table 1.

Low Income Program	**Dollar Amount**	**Percentage**
LIEAP rate discount	885,818	49.6
Weatherization	550,000	30.8
Low-income renewable projects	100,000	5.6
Energy Share	250,000	14.0
Total	**$1,785,818**	100 %

12. DPHHS recommended that the Commission require MPC to file compliance tariffs increasing the level of the LIEAP rate discount to a level of $885,818 and suggested that unspent large customer rebate funds that become available should be allocated 78 percent to bill assistance and 22 percent to Energy Share. HRDC Directors' Association asserted that MPC's advisory board proposal reinvents the Governors Low-Income Energy Advisory Committee (LIEAC), on which MPC has one of six seats. According to HRDC Directors' Association, LIEAC identified $6 million in unmet low-income need. Order No. 5986g designated about $1.8 million for MPC low-income programs in 1999. HRDC Directors' Association recommended that the Commission fix that allocation for each subsequent year until the total low-income allocation exceeds $6 million.

1 Pursuant to Section 69-8-402(2), MCA, the total USBC funding level remains in effect until July 1, 2003.

13. XENERGY supported MPC's advisory board proposal and asserted that it is important that the board advise MPC on the use of all USBC funds. Unless the board is involved in allocating the total amount of the funds, necessary tradeoffs between various funding objectives cannot be achieved. XENERGY asserted that there should be a fair and open bidding process for all USB related programs to ensure that customers receive high quality, innovative and progressive services for the lowest cost; private businesses should not be excluded from bidding on program contracts. XENERGY supported MPC's proposed board membership, but suggested that it should include a member from the energy efficiency community.

14. Nancy Pitblado commented that MPC's proposed advisory board should be changed to a collaborative oversight board with decision-making power. Consensus should be required since universal system benefits programs, by definition, are appropriately designed collectively by users. MPC's responsibility should be to carry out the plans developed by the collaborative group. The collaborative membership should be relatively small to assure good group interaction, but should also have a broad and balanced composition. Ms. Pitblado suggested that more than one environmental and low-income representative might be necessary to fully represent the diversity within these groups. Except for its own representative, MPC should not select the representatives of the other public interest representatives. Where it is not possible for a public interest to select its own representative the PSC or another public entity should assume that role.

MPC's Response Comments

15. MPC emphasized that its universal system benefits funding is not a statewide solution to low-income needs. The universal system benefits charge is a preferred mechanism for funding public purposes in Montana because it creates more "universal" support for public purposes by all utilities and, potentially, all energy fuels. Senate Bill 390 provides flexibility that allows each utility and qualifying large customer to implement its own qualifying programs/activities. MPC believes that it is inappropriately singled out as the sole solution to a statewide low-income problem.

16. MPC asserted that there is an absence of comments from non-low-income parties in the case, and that the limited responses submitted to the Commission are heavily weighted toward low-income interests, some of which are not even parties in the case. Neither Energy Share nor the HRDC Directors' Association formally intervened in this Docket. MPC stated that it is

committed to incorporating balanced, knowledgeable advice of interested parties in developing USB programs and strategies. However, MPC also expressed concern that the voices of an interested consumer and an energy conservation firm could be drowned out by low-income voices.

17. MPC indicated that it would revise its advisory board proposal in response to further discussion with interested parties and responses to the Commission's notice. Under the revised proposal the board would function more like MPC's Conservation and Least Cost Planning Advisory Committee (CLCPAC). The modified advisory committee proposal would incorporate a consensus process rather than use a voting structure. MPC disagreed that the existing CLCPAC should be used to address USBC allocation issues, because the CLCPAC was created for a specific purpose and, although many issues and public interests are similar, they are not identical.

18. MPC stated that it strongly believes that low-income allocation issues should be considered along side other public purpose program issues by the same advisory process. This allows better integration of universal system benefits funds within public purpose categories and promotes opportunities to partner activities between categories. Furthermore, although MPC agrees that there has been substantial effort to examine statewide low-income issues, the issues before MPC and its advisory board are specific to the needs of MPC electric customers. MPC stated that the $6 million unmet low-income need referenced by the HRDC Directors Association is an estimate of statewide need that is not specific to needs in MPC's service territory. It is not appropriate to apply a statewide need for all low-income customers using all fuel types to the MPC service territory.

19. MPC disagreed that a low-income allocation should be fixed beyond 1999. Fixing the low-income allocation for the entire initial funding period does not recognize the possibility for a reduction in the level of universal system benefits funds. A fixed, multi-year allocation would eliminate the ability to respond to an evolving energy industry, restrain the development of innovative and competitive opportunities for delivering low-income energy services and inhibit the integration of various public purpose objectives and funding sources. MPC stated that a fixed allocation is especially premature given that the Department of Revenue has not developed its guidelines for credits. MPC asserted that a fixed, multi-year low-income allocation is not in the best interests of its customers.

20. According to MPC, the low-income allocation proposal recommended jointly by DPHHS, HRDC Directors Association and District XI HRC is incomplete and would not allow MPC to include qualifying low-income expenditures that are currently in electric rates. MPC stated that the joint allocation proposal does not appear to reflect LIEAP uncollectables, outreach, advertising and MPC administrative costs.

21. Although MPC believes the 1999 low-income allocations should be decided through a consensus process with an advisory committee, MPC recommended the following allocation in the event the Commission decides to specify an allocation. The joint recommendation from DPHHS, HRDC Directors Association and District XI HRC is shown for comparison.

Table 2.

Low-Income Program	MPC	DPHHS et al
Low-income bill assistance	850,000	885,818
Weatherization	480,000	550,000
Low-income renewable projects	100,000	100,000
Energy Share	100,000	250,000
LIEAP/bill assistance outreach	200,000	0
Total	$1,730,000	$1,785,818

22. MPC recommended increasing the electric low-income rate discount to 15 percent for the balance of 1999. MPC said an increase in the amount of the rate discount could stimulate interest and increase participation in the discount program. However, MPC also said a larger discount does not provide a long-term solution. Weatherization and, possibly, renewable applications would provide more sustainable and permanent ways to lower bills than the rate discount.

COMMISSION DECISION

23. Senate Bill 390 does not require any specific allocation, except that low-income assistance must account for at least 17 percent of MPC's total universal system benefits program expenditures. Furthermore, neither the Commission, the legislature nor a collaborative of public interests has developed a public policy foundation or guidelines that can be used to weigh low-income needs against opportunities for cost-effective conservation, market transformation and renewable projects, much less how to weigh alternative uses for MPC's low-income allocation. Each of the suggested low-income allocations before the Commission qualifies under the general

requirements in Senate Bill 390. Without established allocation guidelines or criteria, the choice of the low-income allocation largely comes down to judgment.

24. DPHHS asked the Commission to specify the low-income allocation for 1999 and reconsider its decision not to authorize an increase in the level of the low-income rate discount. The parties, including MPC, seem to agree that an increase in the electric low-income rate discount would be appropriate, at least temporarily. Therefore, DPHHS's request for reconsideration in this regard is granted. MPC should file compliance tariffs to increase the electric low-income rate discount to 15 percent, the level recommended by MPC in its response comments and also supported by District XI HRC.

25. Although MPC would prefer to have an advisory committee establish the low-income allocation, the low-income groups question whether an advisory committee can be created and address allocation issues quickly. The timing of an allocation resolution seems to be particularly important to Energy Share, which operates on a fiscal year basis. A Commission approved low-income allocation might be beneficial in the event establishing an advisory committee takes longer than anticipated. The Commission granted MPC enough flexibility in Order 5986g to accommodate a consensus allocation if an advisory committee is established and decides another allocation is better. MPC should use the low-income allocation in Table 3 as its guide for the 1999 program year. This allocation reflects a melding of DPHHS's and MPC's proposed allocations. As directed in Order No. 5986g, MPC should document deviations from this allocation in its annual report on universal system benefits program activities.

Table 3.

Low-Income Program	Target 1999 Funding Level
Low-income bill assistance	885,818
Weatherization	480,000
Low-income renewable projects	100,000
Energy Share	220,000
LIEAP/bill assistance outreach	100,000
Total	$1,785,818

26. DPHHS, HRDC Directors Association and Energy Share asked the Commission to establish a specific low-income allocation for the entire initial funding period established in Senate Bill 390, which ends July 1, 2003. It is inappropriate to establish a specific low-income alloca-

tion for any year other than 1999 at this time. Such an action would presume that the total low-income allocation, $1.78 million plus unspent large customer rebate funds, is the optimal low-income allocation in each year. This presumption was not addressed in the course of this proceeding, and there is no record evidence to support it.

27. The Commission did not base the $1.78 million low-income allocation for 1999 on an approved public policy prescription for allocating funds between competing public purposes. In fact, partly because of the absence of established allocation policies, the Commission supplemented the low-income allocation for 1999 in order to respond to a need that all parties conceded exists. However, once allocation policies/guidelines are created, either through Commission rules or an advisory committee, the optimal low-income allocation may turn out to be different. MPC correctly stated that setting a multi-year low-income allocation at this time would eliminate a degree of flexibility and could interfere with the goal of maximizing benefits through the entire universal system benefits fund. Finally, fixing the low-income allocation for only a subset of qualifying low-income programs/activities could preclude the introduction of innovative low-income energy services by new entities.

28. DPHHS recommended that unspent large customer rebate dollars should be allocated 78 percent and 22 percent to bill assistance and Energy Share, respectively. The Commission rejects this recommendation. The availability of these funds for low-income purposes will not be known with certainty until November. MPC and the other interested parties are encouraged to work out a strategy for using these funds through a collaborative approach.

29. MPC proposed an alternative advisory committee structure for the purpose of developing publicly driven universal system benefits program allocations. MPC should pursue its advisory committee proposal with interested parties. The advisory committee should develop a strategy for allocating all of MPC's universal system benefits funds, including low-income funds. MPC must set up an informational meeting with the Commission within one month of the service date on this order to report on its progress in establishing the advisory committee. MPC must file a report, on behalf of its advisory committee, by September 3, 1999, describing the consensus strategy for allocating MPC's USB funds in the year 2000. The Commission will then provide interested persons a 20 day written comment period and an opportunity to request a hearing.

The Commission will issue an order either approving or modifying the allocation strategy based on written comments and/or a public hearing.

CONCLUSIONS OF LAW

1. All Findings of Fact are incorporated in this Order as Conclusions of Law.

2. MPC furnishes electric service for consumers in the State of Montana and is a public utility under the regulatory jurisdiction of the Montana Public Service Commission. The Commission properly exercises jurisdiction over MPC's rates and operations. §§ 69-3-101 and 69-3-102, MCA.

3. The Commission exercises authority over public utilities and the electric utility industry restructuring pursuant to its authority under Title 69, Chapter 8, MCA (Senate Bill 390 or "Electric Utility Industry Restructuring and Customer Choice Act," effective May 2, 1997).

4. Pursuant to Title 69, Chapter 8, MCA, the Commission has the duty to implement a Universal System Benefits Charge, as enacted by the legislature in 1997, to be imposed beginning January 1, 1999. § 69-8-402, MCA.

5. The Commission provided adequate public notice of all proceedings and an opportunity to be heard to all interested parties in this Docket. §§ 69-3-303, 69-3-104, and 69-8-202, MCA; and Title 2, Chapter 4, MCA (Montana Administrative Procedures Act).

ORDER

1. THE MONTANA PUBLIC SERVICE COMMISSION HEREBY DIRECTS THE FOLLOWING: MPC should use the low-income allocation in the following as its guide for the 1999 program year. This allocation reflects a melding of DPHHS’s and MPC’s proposed allocations. As directed in Order No. 5986g, MPC should document deviations from this allocation in its annual report on universal system benefits program activities.

Low-Income Program	Target 1999 Funding Level
Low-income bill assistance	885,818
Weatherization	480,000
Low-income renewable projects	100,000
Energy Share	220,000
LIEAP/bill assistance outreach	100,000
Total	$1,785,818

2. The Commission will not establish a specific low-income allocation for any year other than 1999 at this time.

3. MPC and the other interested parties are encouraged to work out a strategy for using the unspent funds from the large customer credits through a collaborative approach.

4. MPC shall pursue its advisory committee proposal with interested parties for the purpose of developing universal system benefits program allocations. The advisory committee should develop a strategy for allocating all of MPC's universal system benefits funds, including low-income funds. MPC must set up an informational meeting with the Commission within one month to report on its progress in establishing the advisory committee. MPC must file a report on behalf of its advisory committee by September 3, 1999, describing the consensus strategy for allocating MPC's Senate Bill 390 funds in 2000.

DONE AND DATED this 11th day of May, 1999 by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

DAVE FISHER, Chairman

NANCY MCCAFFREE, Vice Chair

BOB ANDERSON, Commissioner

GARY FELAND, Commissioner

BOB ROWE, Commissioner

ATTEST:

Kathlene M. Anderson
Commission Secretary

NOTE: You may be entitled to judicial review in this matter. Judicial review may be obtained by filing a petition for review within thirty (30) days of the service of this order. Section 2-4-702, MCA.